

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v. 17-CR-183  
DECISION AND ORDER  
CESAR RIVERA-FIGUEROA,  
Defendant.

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A forty-nine count superseding indictment charged twelve defendants with offenses involving controlled substances and firearms. Docket Item 53. One of those defendants, Cesar Rivera-Figueroa, was charged with engaging in a continuing criminal enterprise, in violation of 21 U.S.C. § 848 (Count 1); conspiring to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846 (Count 2); attempting to possess with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 846 and 18 U.S.C. § 2 (Counts 3 and 5); possessing with intent to distribute and distributing 500 grams or more of cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) (Count 4); and using a communication facility to commit a drug felony, in violation of 21 U.S.C. § 843(b) (Counts 6, 9, 15-18, 20-22, 25-36, and 39). *Id.* Rivera-Figueroa was released on bail following a detention hearing on October 25, 2017. Docket Item 48.

On July 2, 2019, Rivera-Figueroa pleaded guilty to count 1 of the superseding indictment, engaging in a continuing criminal enterprise (Docket Item 338), and is now awaiting sentencing scheduled for August 21, 2020 (Docket Item 523). Both the plea agreement and the presentence investigation report anticipate a United States Sentencing Guidelines range of 240-262 months imprisonment. Docket Items 338 and

467. Following his plea of guilty, Rivera-Figueroa sought release pending sentencing. Finding no exceptional reason<sup>1</sup> to justify his continued release, this Court denied his request, and he was remanded pending sentencing. Docket Item 339.

On March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York in response to the COVID-19 pandemic. On March 13, 2020, the President of the United States issued a proclamation declaring a national emergency in response to the pandemic. As a result, on March 13, 2020, Hon. Frank P. Geraci, Jr., Chief Judge of the United States District Court for the Western District of New York, issued an order limiting court operations in the district. In the weeks since March 13, 2020, Chief Judge Geraci has issued several additional orders further restricting access to the courthouse, as well as authorizing both civil and criminal proceedings to be conducted by video- or teleconferencing.

In less than four months, 2,447,920 people have been diagnosed with the disease. See *Coronavirus Resource Center*, John Hopkins Univ. & Med. (April 20, 2020, 3:54 PM), <https://coronavirus.jhu.edu/>. 168,906 have died. *Id.* In the United States, 749,666 have been diagnosed and 35,012 have died. *Id.* The Centers for Disease Control and Prevention (“CDC”) has issued guidance and identified the

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<sup>1</sup> Because Rivera-Figueroa pleaded guilty to “an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act” and was awaiting the imposition of his sentence, the court had no choice but to order that he be detained unless it found that release was warranted under either 18 U.S.C. § 3143(a)(2),<sup>1</sup> which was not applicable, or § 3145(c), which permits release only for “exceptional reasons.”

following people to be at a greater risk for severe illness from COVID-19: people over the age of 65; people who live in a nursing home or long-term care facility; and people of all ages with certain underlying medical conditions, particularly if not well controlled, including those who have chronic lung disease, moderate to severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, and chronic liver disease, as well as those with conditions causing them to be immunocompromised. See *Centers for Disease Control and Prevention*, (April 20, 2020, 3:58 PM), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html>.

On April 3, 2020, Rivera-Figueroa moved for his immediate release, citing the unprecedented national emergency caused by the COVID-19 pandemic. Docket Item 589. But he does not allege that he suffers from any condition that would render him a vulnerable person as defined by the CDC; on the contrary, Rivera-Figueroa acknowledges that his health conditions (obesity, signs of sleep apnea, possible cancerous mass in his hand, and risk for hypertension and diabetes) are speculative and may only potentially place him at higher risk. Docket Item 589 at ¶¶ 15-16. What is more, Rivera-Figueroa is only twenty-nine years old and therefore not at increased risk because of his age. Nevertheless, he argues that he should be released because the conditions of pretrial confinement in any jail are such that it is “an ideal environment for the transmission of contagious disease.” *Id.* at ¶ 10. The government opposes the motion. Docket Item 603.

The Court is not aware of any confirmed cases of COVID-19 among the inmate population at the Niagara County Jail. While that is something that certainly can change

quickly, the Niagara County Jail now appears to be a relatively safe, uncontaminated environment. Moreover, while incarceration in any prison poses the risks that living in any facility with many inhabitants poses today, those risks alone do not override the reasons for detention or incarceration. *See, e.g., United States v. Smalls*, No. 20-CR-126-LTS, 2020 WL1866034 (S.D.N.Y. Apr. 14, 2020). Because the Court has no evidence that Rivera-Figueroa is a vulnerable individual as identified by the CDC, there is not an exceptional reason to release him under 18 U.S.C. §3145(c) and therefore no reason for this Court to revisit its prior order of detention.

### **CONCLUSION**

For the reasons set forth above, the Court finds that Rivera-Figueroa has not demonstrated an exceptional reason under 18 U.S.C. § 3145(c) to warrant his temporary release from custody. His motion for release, Docket Item 589, is therefore DENIED.

SO ORDERED.

Dated: April 21, 2020  
Buffalo, New York

*s/ Lawrence J. Vilardo*  
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LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE